

Overlapping Land and Natural Resource Property Rights: A Comparative Analysis from Africa

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Abstract

In much of Africa, the bundle of land rights that most rural people might legally hold is relatively small—usually limited to surface rights and certain rights to some natural resources (*e.g.*, rights to water for domestic use). Separate, distinct property rights regimes exist for many high-value natural resources (*e.g.*, oil, natural gas, minerals and wildlife), governed by different laws and administered by various public institutions. The rights to these natural resources are often allocated to outside, commonly foreign entities for large-scale operations. As a consequence, one individual or institution may legally hold the rights to the land while other entities hold the rights to the natural resources on or under the same plot of land. This paper provides a review of the principal (framework) mineral and petroleum laws in Liberia, Ghana, Uganda and Kenya. The laws were reviewed to assess the authorities of natural resource rights holders (hereafter licensees) operating on privately-held land, and the rights of landholders to exercise their land rights (including procedural and substantive rights). The review focuses on five sets of issues: ownership and control; notification and consent; licensee authorities; landholder rights; and compensation. The paper also provides some comparative analyses across the two natural resources and across the four research countries. It concludes with some recommendations designed to reduce conflicts over land use and to protect the livelihoods of rural landholders.

Introduction

Most land and many natural resources in Africa are the property of the state and are vested in or held in trust by the government for the people. In most countries, governments have established separate, distinct property rights regimes for land and many resources (*e.g.*, oil, natural gas, minerals and wildlife), governed by different laws and administered by various public institutions. While communities may claim customary rights, the legal rights of access, control, transfer and exclusion—the bundle of property rights to explore, develop, produce or otherwise use many high-value natural resources—are only available to individuals and institutions when specifically granted by government.

A growing number of Africa's land laws recognize customary tenure arrangements and provide procedures for documenting, registering and perhaps titling traditional land. The bundle of land rights that most rural people might legally hold, however, is relatively small—usually limited to surface rights and certain rights to some natural resources (*e.g.*, rights to water for domestic use). In most African countries, governments are not required by law to grant landholders the rights to natural resources that lie on or below the land. Rural people and communities can acquire legal rights to some natural resources not in the bundle of land rights and, in some cases, the government has established separate procedures for rural people communities to secure rights to local natural resources, including those on their land (*e.g.*, Community Forests in Cameroon and Wildlife Management Areas in Tanzania).

In most countries, the rights to high-value natural resources are often allocated to outside, commonly foreign entities for large-scale operations. As a consequence, one individual or institution may legally hold the rights to the land while other entities hold the rights to the natural resources on or under the same plot of land. As governments encourage private investments in their natural resources to promote economic development, instances of overlapping land and natural resource rights have become more common. Such overlapping rights are also a growing source of rural conflict as the various holders pursue different, sometimes contradictory land use practices to exercise their rights.

Considerable attention by government, civil society, private companies and donors has focused on addressing overlapping land rights (or claims) which, in most cases in Africa, are illegal. Less attention has focused on overlapping land and natural resource rights with much of this attention focused on the rights of access to information¹ and landholder participation (*e.g.*, free, prior and informed consent—FPIC), and ensuring fair and prompt compensation for losses from natural resource operations. This paper provides a review of the framework mineral and petroleum laws in Liberia, Ghana, Uganda and Kenya. The laws were reviewed to assess the authorities of natural resource rights holders (hereafter licensees) operating on privately-held land (including household land and common property held under customary tenure arrangements), and the rights of landholders to exercise their land rights (including procedural and substantive rights). The paper also provides some comparative analyses across the two natural resources and across the four research countries. It concludes with some recommendations designed to reduce conflicts over land use and to protect the livelihoods of rural landholders.

Methods

Research for this report was conducted to address the following five sets of issues:

- 1) **Ownership and Control**. Who owns and controls the natural resource? Can governments acquire privately-held land in a compulsory manner for mineral and petroleum purposes?
- 2) **Notification and Consent**. Must landholders be notified and provide their consent before rights to the natural resource on or under the land can be granted to another individual or institution (hereafter licensee)? Must landholders be notified and provide their consent before the licensees can enter onto the land and exercise their rights?

- 3) Licensee Authorities. What rights and authorities do licensees have to use privately-held land to exercise their rights to natural resources?
- 4) Landholder Rights. What rights do landholders have to use their land and what authorities do they have over licensee operations on their land?
- 5) Compensation. What compensation, if any, is provided to landholders for damages, disturbances to their land rights and other losses?

Legal reviews were conducted of the principal (framework) mineral and petroleum laws in Ghana, Liberia, Uganda and Kenya (Box 1). This work also included reviews of critical enabling regulations (*i.e.*, Kenya and Uganda); advanced petroleum bills (*i.e.*, Ghana and Uganda²); and Kenya's Model Production Sharing Contract, given the age of its framework petroleum law (1940). While many actions in the mineral and petroleum supply chain can affect land rights, the research focused on exploration, extraction, production and other upstream operations, not on transportation, processing, marketing or other downstream activities.³ As a result, the research reviewed only the upstream petroleum laws in Ghana and Uganda, and only the exploration and production portions of the petroleum laws in Kenya and Liberia as well as the upstream portions of the mineral laws in the four countries.

In addition to the legal reviews, the research involved literature reviews and interviews of some civil society leaders in the target countries. Preliminary research was also conducted of the framework forestry laws and regulations in the four target countries, and the petroleum, mineral and forestry laws in Nigeria and Tanzania.

Findings

The findings from the research are organized by natural resource and five sets of issues:

Mineral Rights

Ownership and Control. The mineral laws in Ghana, Liberia, Uganda and Kenya establish that minerals are the property of the state and/or are vested in the government (Boxes 2 and 3). They also provide that the exploration and extraction of minerals requires government authorization.⁴ Most land, including most privately-held land, is open for mineral operations, although some laws restrict certain mineral operations from specific land.

Although the constitutions provide the governments in the four countries with the authority to acquire privately-held land in a compulsory manner, principally for various public interest purposes, only the mineral laws in Ghana and Kenya provide government with the authority to exercise this power for the purpose of conducting mineral operations (the mineral laws in Uganda⁵ and Liberia are silent on this matter). Ghana's mineral law provides that "Where land is required to secure the development or utilization of a mineral resource, the President may acquire the land or authorize its occupation and use under an applicable enactment for the time being in force."⁶ In practice, the government rarely exercises this authority partly because the mineral law provides licensees with broad authorities to conduct operations on privately-held land and the costs of compulsory acquisitions can be considerable (see below).

Notification and Consent. The governments in the four research countries are not required by the mineral law to inform or have the consent of landholders to establish mining blocks on privately-held land. In Ghana and Uganda, however, the mineral law requires the government to notify the landholder when issuing a mining license. In Ghana, the Minister must provide written notification of a pending license to the landholder, chief and local government not less than 45 days prior to allocating the license. In Uganda, the Mining Regulations (2004) provide that the Commissioner must notify the landholder and

local government of the decision to grant a mining license and provide a map of the mining area. The mineral laws do not require the government to have the landholder's consent to issue a license.

The mineral laws require the licensee to notify and, in some countries, to have the consent of the landholder before beginning operations. In Kenya, the mineral law provides that mining of privately-held land requires the consent of the owner.⁷ If, however, consent "is unreasonably withheld or the Minister considers that any withholding of consent is contrary to the national interest, the Minister may" acquire the land in a compulsory manner.⁸ This provision provides the Minister with considerable discretion to interpret "unreasonably withheld" and "national interest," rendering the consent requirement essentially useless.

In Uganda, the mineral law requires that the licensee have the written consent of the landholder to operate in certain areas. Specifically, the licensee cannot mine within 200 meters of occupied building, five meters of land prepared for agricultural crops, and 100 meters of cattle dips or tanks "without the written consent of the owner or lawful occupier"⁹ and with "respect of or on any land, which is held communally for cultural rites, without the written consent of the community concerned."¹⁰

Finally, in some countries, the licensees must have the consent of the landholder to use certain natural resources on privately-held land. Kenya's Mining law (1940) provides that for prospecting, the licensee may use "...with the consent of the owner or occupier of private land or on tendering to the owner or occupier a reasonable sum in payment therefore, any fuel other than standing timber."¹¹

Licensee Authorities. The mineral laws in all four research countries provide licensees with broad authorities to conduct mineral operations on privately-held land, including using the land and certain natural resources to exercise their mineral rights. In Liberia, the law provides that all mineral licenses must provide the holder with various rights, such as the rights to erect building, construct roads, dig drainage ditches, make trenches and cut timber for mining operations.¹²

In Ghana, the mineral lease provides the licensee the rights to "(a) conduct mineral operations including, without limitation, to mine for the specified minerals of the mining lease, (b) erect equipment, plant and buildings for the purposes of mining, transporting, dressing, treating, smelting or refining the specified minerals recovered by the holder during the mining operations, (c) take and remove from the land the specified minerals and dispose of them in accordance with the holder's approved marketing plan, (d) stack or dump a mineral or waste product as approved in the holder's Environmental Impact Statement, and (e) conduct other incidental or ancillary activity."¹³

In Uganda, the mineral law provides similar authorities to the licensees. It does not authorize the government to expropriate privately-held land for mineral operations, but does provide that licensees can obtain the exclusive use of such land.¹⁴ Further, the enabling regulations provide that license holders can request government to remove landholders from their land.¹⁵

In some countries, the mineral law provides the licensee with the right to use certain natural resources for specific purposes. In Uganda and Ghana, water for mineral operations must be acquired separately.¹⁶ In Liberia, however, the mineral law provides that the mineral license must provide holders with the right to use "water and other resources necessary for the execution of the work,"¹⁷ including timber.¹⁸ The mineral law in Kenya provides that licensees have the authorities, "subject to the provisions of any law relating to water, to lay water pipes and to make water-courses and pounds, dams and reservoirs, and to divert from a natural watercourse any water on or flowing entirely through the land..."¹⁹ Further, the holder may "...cut, take and use any tree when necessary in the course of mining operations or when required for mining or domestic purposes" although the licensee must "...pay to the owner or occupier of the land on which such tree is standing a reasonable sum therefore" as well as any fees and royalties that may apply.²⁰

While the authorities of licensees are broad, they are not absolute. All mineral laws require licensees to meet international social and environmental standards in performing their mineral operations, although it is often not clear which standards they must adhere to (Box 4). Some mineral laws also provide that licensees must make efforts to not adversely affect the interests of the landholder. The mineral law in Uganda provides that “The rights conferred by a mineral right shall be exercised reasonably and in such a manner as not to adversely affect the interests of any owner or occupier of the land on which the rights are exercised.”²¹

Landholder Rights. The mineral laws vary considerably in the rights they provide landholders. In Liberia “The legal owner or lawful occupant of property on which minerals are discovered shall be entitled to a right of first refusal in any application...” for mining.²² The mineral laws in Ghana, Uganda and Kenya, however, do not provide the landholder with any special rights to the minerals under the land, although s/he may apply for a mineral license.²³ Ghana’s mineral law is clear on this matter, “Despite a right or title which a person may have to land in, upon or under which minerals are situated, a person shall not conduct activities on or over land in Ghana for the search, reconnaissance, prospecting, exploration or mining for a mineral unless the person has been granted a mineral right in accordance with this Act.”²⁴

The mineral laws in Kenya and Liberia are silent on whether and how landholders may use their land. In Ghana, however, the law provides that “The lawful occupier of land within an area subject to a mineral right shall retain the right to graze livestock upon or to cultivate the surface of the land if the grazing or cultivation does not interfere with the mineral operations in the area.”²⁵ It also explicitly restricts certain rights—the landholder “shall not erect a building or a structure”²⁶ and “shall not upgrade to a higher value crop”²⁷ without the consent of the holder of the mining lease.

In Uganda, landholders may also graze livestock and cultivate the land if they do not interfere with mineral operations.²⁸ Any loss to stocks and crops is borne by the landholder and any interference with mineral operations “shall be a ground for terminating such right.”²⁹ By the mineral law, landholders can request licensees to obtain exclusive use of some of his land (presumably by sale or lease).

Compensation. The mineral laws in the four research countries provide compensation to landholders for losses and damages from government or licensees. In Liberia, the “...Landowners or Occupants of Land shall be entitled to just, prompt and adequate compensation for any diminution in the value of Land caused by disturbance, disfigurement or other factors occasioned by the Government’s exercise of its rights” over minerals.³⁰ In Ghana, “The owner or lawful occupier of any land subject to a mineral right is entitled to and may claim from the holder of the mineral right compensation for the disturbance of the rights of the owner or occupier...”³¹ Similar provisions are in the mineral laws in Kenya³² and Uganda.³³ In many African countries, public interest law organizations have represented poor and marginalized communities, ensuring they receive fair and prompt compensation for property damages (*e.g.*, Centre for Public Interest Law (CEPIL) in Ghana).³⁴

The mineral laws in some countries provide landholders a choice in the type of compensation. Ghana’s mineral law provides landholders the option of receiving compensation payments or being resettled.³⁵ Uganda’s law provides that “The owner or lawful occupier of any land subject to a mineral right is entitled to compensation ... or to a share of royalties....”³⁶ The landholder share is currently set at 3% (2nd Schedule).³⁷

Petroleum Rights

Ownership and Control. The petroleum laws in Liberia, Ghana, Uganda and Kenya establish that: 1) petroleum is the property of the state (Box 6); 2) exploration and production of petroleum requires

government authorization;³⁸ and 3) some privately-held land is open for petroleum operations (Box 5). In contrast to some mineral laws, the petroleum laws in the research countries do not provide that petroleum is vested in or held in trust by the government for the people. The petroleum laws in Uganda,³⁹ Liberia⁴⁰ and Ghana⁴¹ also provide that conducting petroleum operations without government approval is an offense and establish specific penalties for such offenses.

Similar to some mineral laws in the research countries, the petroleum laws restrict petroleum operations on certain land. Except with special authorization, licensees in Liberia cannot execute petroleum operations on “Land located less than fifty meters from any building whether religious or not, Governmental building, or those in use by a public entity, walled enclosures, court and gardens, residence and groups or residences, villages, settlements, cultural reserves, burial grounds, wells, water sources, reservoirs, roads, paths, railroads, water drains, pipelines, work declared to the (sic) of public interests and works of art.”⁴²

The petroleum laws in Uganda and Ghana are silent on compulsory land acquisition for the purposes of petroleum operations, although Ghana’s petroleum bill (2010) provides for this authority.⁴³ Liberia’s law, however, provides that “In order to facilitate that realization of petroleum operations, installations and related activities, the State may expropriate private land and declare same for public, upon the request of the National Oil Company of Liberia, for the purposes of public interest, convenience and necessity.”⁴⁴ In Kenya, the Model Production Sharing Contract provides that, at the request of licensees, the government may acquire privately-held land, set apart Trust Land,⁴⁵ and grant “way-leaves, easements, temporary occupation or other permissions within and without the contract area as are necessary to conduct the petroleum operations.”⁴⁶

Notification and Consent. In contrast to some mineral laws, the petroleum laws in all research countries do not require governments to notify or have the consent of the landholder before establishing petroleum blocks or granting petroleum rights. In some countries, the petroleum laws require licensees to notify the landholder before beginning operations and, in Liberia, “mutual agreement” between the landholder and the petroleum operator is required, but if agreement cannot be reached, the government can intervene.⁴⁷

In Ghana, before the commencement of petroleum operations, “...all persons having a title to or interest in the land on which such operations are to be carried out shall be notified of the purpose, nature and location of the proposed operations...”⁴⁸ The landholders, however, “...shall, after consultation with the Corporation, permit the carrying out of such operations...”⁴⁹ Ghana’s petroleum bill (2010) goes further by requiring permission—“Where the conduct of petroleum operations is likely to affect any lawful economic or social interest or activity the Corporation shall negotiate the appropriate permission required from the relevant authorities and interested persons and the Contractor or the Corporation shall pay the agreed compensation to the interested persons.”⁵⁰

In Uganda, licensees must have the written consent of landholders to use land within 200 meters of occupied buildings, within 50 meters of cleared and ploughed agricultural land (including land that was farmed the previous year) and within 100 meters of ditches, tanks, dams or water used by man or cattle.⁵¹ However, “...where consent of the lawful occupier is unreasonably withheld, the Minister may authorise the holder of the licence to exercise all or any of his or her rights under the licence on such land subject to such conditions as the Minister may deem fit...”⁵² The Uganda’s petroleum bill (2012) provides the same restrictions,⁵³ but also requires licensees to produce their license to landholders.⁵⁴

In Kenya, the petroleum law provides that licensees must give landholders a 48-hour notice before entering their land and, if required by landholders, must provide a security for compensation.⁵⁵ Further, the Petroleum Regulations (1986) provide that licensees cannot enter certain land, including places of worship, sacred buildings, burial grounds or “any area situated within fifty metres of any building in use,

or any reservoir or dam.”⁵⁶ Entry into these areas requires the consent of the competent authority (including customary leaders).⁵⁷

Similar to some mineral laws, the petroleum laws provides that the use of certain natural resources on privately-held land requires the permission of landholders. In Kenya, the Model Production Sharing Contract provides that “The contractor may, for the purpose of the petroleum operations, use gravel, sand, clay and stone in the contract area—but not in—(a) Trust land without a licence...; (b) other private land without the consent of the owner...”⁵⁸

Licensee Authorities. Licensees in the four research countries have considerable authority to conduct petroleum operations on privately-held land, including the authority to use certain natural resources. In Ghana, licensees have the right to conduct petroleum operations in their block,⁵⁹ including the right to enter any land.⁶⁰ In Kenya, the Model Production Sharing Contract provides that “The contractor shall have the right to carry out the petroleum operations within the contract area, subject to the provisions of this contract for the term hereof.”⁶¹

In Liberia, the petroleum law authorizes licensees to “(o)ccupy the land necessary for the execution of petroleum operations and related activities”⁶² and to conduct petroleum operations, including infrastructure development.⁶³ Licensees also have the authority to use water⁶⁴ and all “ground material” for petroleum operations “subject to payment of fair compensation to the owner.”⁶⁵

In Uganda, *exploration* licenses provide holders “the exclusive right to explore for petroleum, and to carry on such operations and execute such works as may be necessary for that purpose, in the exploration area.”⁶⁶ *Production* licenses provides exclusive rights “to carry on such operations and execute such works in the development area as are necessary for or in connection with” petroleum exploration and development.⁶⁷ Licensees can also obtain exclusive use of privately-held land—such use cannot be refused by landholders, although rent is negotiable.⁶⁸

Similar to the mineral licensees, the authorities of petroleum licensees are limited. In Uganda, licensees must operate in a responsible manner on privately-held land—“The rights conferred by a licence shall be exercised reasonably and so as to affect as little as possible the interests of any lessee or lawful occupier of the land to which the rights are exercised...”⁶⁹ In Kenya, the Model Production Sharing Contract provides that “...the contractor shall not unreasonably deprive the users of land, domestic settlement or cattle watering place of the water supply to which they are accustomed.”⁷⁰ In Liberia, when operating off-shore, “The Licensee shall not carry out any operation or authorize any operations in such a manner as to interfere unjustifiably with navigation or fishing in the Licensed Area.”⁷¹

The petroleum laws in all four research countries also require licensees to meet certain social and environmental standards in performing their mineral operations (Box 7). In Kenya, petroleum agreements require licensees to “Conduct petroleum operations in accordance with sound professional and technical skills and adopt measures necessary for the conservation of petroleum and other resources and the protection of the environment and human life.”⁷²

Landholder Rights. While the mineral laws in Liberia, Ghana and Uganda provide landholders some rights, only the petroleum laws in Liberia and Uganda provide landholders with some rights. Rather the laws explicitly limit landholder rights and establish sanctions for non-compliance. In Ghana, the law provides that any person (including landholders) who unlawfully interferes, obstructs or hinders petroleum operations, commits a crime punishable by a large fine and/or imprisonment.⁷³ The petroleum law in Liberia provides that landholders can request that licensees purchase their land,⁷⁴ but otherwise, also establishes that landholders cannot interfere with petroleum operations.⁷⁵

In Uganda, the petroleum law provides that the landholder can request licensees to lease their land and pay rent for the exclusive use.⁷⁶ It also provides that “the lessee or lawful occupier of any land within the area shall not erect any building or structure on the land without the written consent of the registered holder of the licence.”⁷⁷ The petroleum bill (2012) has similar provisions,⁷⁸ but also provides that “A land owner of an exploration or development area shall retain the right to graze stock upon or to cultivate the surface of the land insofar as the grazing or cultivation does not interfere with petroleum activities or safety zones in the area.”⁷⁹ Further, it provides landholders “the right to movement and other activities where the subsurface activities do not interfere with an exclusive right, or with petroleum activities in the area.”⁸⁰ These provisions are consistent with those provided landholders in Uganda’s mineral law (see above).

Compensation. Similar to the mineral laws, the petroleum laws provide landholders with compensation for damages and disturbances. In Kenya, the Model Production Sharing Contract provides that licensees must pay landholders compensation for the acquisition of privately-held land⁸¹ and for any damages from petroleum operations.⁸² In Ghana, the petroleum law provides compensation for “any loss or damage as a result of the petroleum operations”⁸³ and establishes a procedure for determining payment.⁸⁴

In Uganda, licensees must pay compensation for petroleum operation damages⁸⁵ and rent for the exclusive use of privately-held land. In case of a dispute, the matter is referred to the Chief Government Valuer for determination.⁸⁶ The petroleum bill (2012) provides similar language,⁸⁷ but limits the period to request compensation to four years. In Liberia, licensees must pay compensation for: all injuries and harms caused by petroleum operations;⁸⁸ the encroachment and use of the land with the national oil company mediating⁸⁹ (including for pipelines⁹⁰); government acquisition of privately-held land in a compulsory manner;⁹¹ and taking and using “ground materials.”⁹²

Conclusions

Many laws and other factors affect the governance of land, minerals and petroleum, and the relations between landholders and licensees. In reviewing only the framework mineral and petroleum laws in four countries, care must be exercised in: developing conclusions and interpreting the research results; generalizing the findings and conclusions to other natural resources (Box 8); and developing recommendations for other nations in Africa and around the world. The findings of this research, however, shed some light on the relations between land, mineral and petroleum property rights in Liberia, Ghana, Uganda and Kenya, including:

Ownership and Control

- Minerals and petroleum are the property of the state (some mineral laws also provide that minerals are vested in the government)
- Mineral and petroleum operations (*e.g.*, exploration and production) require government authorization; use without government authorization is a crime
- Most privately-held land is available for mineral and petroleum operations
- In some countries, government can acquire privately-held land in a compulsory manner for mineral or petroleum operations

Notification and Consent

- Governments are not required by law to notify or have the consent of landholders to establish mineral or petroleum blocks over privately-held land
- Governments are not required by law to notify or have the consent of landholders to allocate petroleum rights over privately-held land
- Governments are not required by law to have the consent of landholders to allocate mineral rights over privately-held land, although some laws require governments to notify the landholders

- In most countries, licensees must notify landholders before beginning mineral and petroleum operations
- In some countries, licensees must have the consent of landholders before beginning mineral and petroleum operations—at least on certain privately-held land
- In some countries, mineral and petroleum licensees must have the consent of landholders to use certain natural resources (*e.g.*, gravel and stones)

Licensee Authorities

- Licensees must meet some social and environmental safeguards, although these standards are not always clearly defined in the mineral and petroleum laws
- Licensees have broad and expansive authorities to conducting mineral and petroleum operations on privately-held land
- Licensees can acquire exclusive use of privately-held land for mineral or petroleum operations by purchase or lease, or by requesting the government expropriate and clear the land

Landholder Rights

- Mineral and petroleum laws do not explicitly provide landholders many significant rights over their land
- With one exception (minerals in Liberia), landholders do not have the right of first refusal over minerals and petroleum under their land
- Some mineral laws provide landholders with the right to cultivate crops or graze livestock on their land, but only in-so-far as the activities do not interfere with *mineral* operations
- Petroleum laws do not explicitly provide landholders with the right to cultivate crops or graze livestock on their land (although Uganda's petroleum bill provides such rights)
- In some countries, landholders can request that mineral or petroleum licensees acquire exclusive use of their land, either by sale or lease
- Some mineral and petroleum laws restrict the construction of buildings or other structures, or to upgrade to a higher value crop without the written consent of licensees
- Some mineral and petroleum laws specifically provide that interference with operations is a crime punishable by fines and/or imprisonment

Compensation

- The mineral and petroleum laws provide landholders with compensation for losses, damages or disturbances paid by governments or licensees
- Compensation is also provided landholders for the exclusive use of their land (from government expropriation or lease)
- Some mineral laws provide landholders the right to select from alternative forms of compensation (*e.g.*, payment or resettlement, in Ghana; and payment or a share of mineral royalties, in Uganda)
- Petroleum laws do not explicitly provide landholders the right to select from alternative forms of compensation

Exploration, extraction, production and other mineral and petroleum operations often profoundly and adversely disturb the rights and damage the property of landholders. While new mineral and petroleum technologies (*e.g.*, ground-penetration radar and horizontal drilling) can reduce these disruptions, many landholders still sustain significant losses and damages. Mineral and petroleum laws require licensees to meet minimum social and environmental standards, but the authorities provided licensees to exercise their resource rights and the land-use restrictions imposed on landholders suggest that, in most cases, mineral and petroleum rights are superior to and trump land rights.

The mineral laws in Ghana and Liberia are explicit on this matter. Ghana's mineral law provides that mining leases give licensees the rights to "(a) conduct mineral operations including, *without limitation*, to mine for the specified minerals of the mining lease..." (emphasis added).⁹³ Liberia's mineral law provides specifically that minerals rights supersede land rights—"Government's right as owner of Minerals in the Republic of Liberia *are absolute and supersede the rights of any Landowners or Occupants of Land* in respect of the Exploitation or Mining of Minerals..." (emphasis added).⁹⁴

Some petroleum laws also address the issue of overlapping natural resource rights, although they do so in various ways. In Liberia and Ghana, the operations of the most recent natural resource rights holder cannot interfere with the operations of the prior rights holder. Liberia's petroleum law provides that "In the event that multiple rights are granted to the same surface area for different mineral substances or hydrocarbon, the activity of the most recent holder of a right shall not be carried out in such manner to prejudice or prevent the activities of the prior holder of the right."⁹⁵ In Ghana, existing mineral rights are not affected by more recently-issued petroleum rights—"Subject to the provisions of section 35 of this Law, the rights granted to the Corporation under subsection (1) of this section shall not affect any rights granted to any person under any licence or authority given under the Minerals Act, 1962 (Act 126) for prospecting and production before the coming into force of this Law."⁹⁶

In Kenya—and in Uganda's petroleum bill (2012)—petroleum rights appear to supersede the rights to minerals and other natural resources. In Kenya, the petroleum law provides that the government can issue permits "for the prospecting and mining of minerals or other natural resources...provided that the prospecting, mining and the other operations shall not interfere with petroleum operations."⁹⁷ The Model Production Sharing Contract has a similar provision.⁹⁸ In Uganda, the petroleum law is silent on this matter, but the petroleum bill (2012) provides that a petroleum licensee cannot conduct operations on land over which a mineral license has been granted without the written consent of the relevant authority.⁹⁹ Further, a "licensee with a different licence other than" petroleum, retains "the right to movement and other activities" if they do not interfere with petroleum operations.¹⁰⁰

Recommendations

In most cases, licensees cannot exercise their mineral or petroleum rights without infringing upon and interfering with the surface rights of landholders. The findings and conclusions from this research, however, show that the mineral and petroleum laws grant such broad authorities to licensees and so significantly restrict land rights that landholders are left with few options. Overlapping land and natural resource rights have resulted in conflicts between licensees and landholders and between governments and landholders. They have also increased the risks and costs of doing business for licensees, and resulted in new hardships for landholders. Research and experience show that restrictions on land use as well as involuntary resettlement, even with fair and prompt compensation, can result in the affected people falling deeper into poverty.

Given the importance of land to rural people and recognizing that few rural people have significant off-farm economic opportunities, there is a need to balance the authorities of licensees and the rights of landholders. This would allow for genuine negotiations and the crafting of compromises that work for both licensees and landholders. To achieve this balance, the authorities of licensees will need to be restricted or limited, and the rights of landholders will need to be broadened and strengthened. This includes providing landholders with stronger procedural rights to better engage in critical decision-making processes, and with more secure property rights to continue using their land for livelihood purposes. More specific policy options and programming recommendations include:

- Increase the bundle of land rights to include mineral, petroleum and other natural resource property rights

- Limit the authority of government to acquire privately-held land in a compulsory manner to genuine public interests, not including economic development, such as mineral and petroleum operations
- Require governments to have the consent of landholders (*e.g.*, FPIC) before establishing mineral or petroleum blocks over privately-held land and allocating mineral and petroleum rights
- Require licensees to have the consent of landholders before entering onto privately-held land and conducting mineral or petroleum operations
- Require mineral and petroleum licensees to meet international social and environmental safeguards in their operations
- Require mineral and petroleum licensees to utilize the latest technologies in their operations to minimize the disturbances and losses to landholders (*e.g.*, horizontal drilling)
- Require licensees to reach agreement with landholders on how the land is used
- Empower landholders with the authority to demand that government or licensees acquire exclusive use of privately-held land—either by purchasing or leasing the land
- Ensure landholders receive fair and prompt compensation for all losses and damages, and for all disturbances to their land rights (*e.g.*, market value plus a premium and payment prior to mineral and petroleum operations)
- Offer landholders various forms of compensation (*e.g.*, payments, share of royalties and resettlement)

Support to rural households whose land is subject to mineral and petroleum operations must move beyond promoting access to information and participation, and ensuring fair and prompt compensation for damages. While important, such efforts must be complimented by power shifts, specifically reforms to limit the authorities of licensees to exercise their natural resource rights on privately-held land and to strengthen the substantive rights of landholders over their land. Balancing landholder rights and licensee authorities will create level playing fields that allow for meaningful negotiations between the parties, promote land uses and practices that meet landholder and licensee needs, and reduce conflict stemming from overlapping land and natural resource property rights. Strengthening land rights will also help ensure that landholders capture more benefits from the minerals and petroleum under their land (beyond compensation for damages and disruptions), contributing to rural development and poverty reduction.

Box 1. Laws, Regulations and Bills Reviewed for Research

Ghana

Minerals and Mining Act, 2006

Petroleum Exploration and Production Law, 1984

Petroleum (Exploration and Production) Bill, 2010

Liberia

An Act Adopting a New Minerals and Mining Law, 2000

An Act Adopting a New Petroleum Law of the Republic of Liberia, 2002

Uganda

Mining Act, 2003

Mining Regulations, 2004

Petroleum (Exploration and Production) Act, 1985

Petroleum (Exploration and Production) Regulations, 1993

Petroleum (Exploration, Development and Production) Bill, 2012

Kenya

Mining Act, 1940

Petroleum (Exploration and Production) Act, 1986

Petroleum (Exploration and Production) Regulations, 1986

Petroleum (Amendment) Rules, 2006

Model Production Sharing Contract

Box 2. Ownership and Control of Minerals					
	Kenya	Ghana	Liberia	Uganda	
CRITERIA	Mining Act, 1940	Minerals and Mining Act, 2006	An Act Adopting a New Minerals and Mining Law, 2000	Mining Act, 2003	
Are minerals the property of the state?	Silent	Y [S1]	Y [S2.1]	Y [S3]	
Are minerals vested in the government?	Y [S4]	Y [S1]	Silent	Y [S3]	
Can the government acquire private land in a compulsory manner for mineral operations?	Y [S7(3)]	Y [S2]	Silent	Silent	
Can the government allocate mineral rights under private land?	Y [S7(1)(m)]	Y [S3]	Y [S2.2]	Y [S3]	
Do mineral operations require government approval?	Y [S6(1)]	Y [S9(1)]	Y [S4.1; S6.1]	Y [S4(2)]	
Are mineral operations without government approval a crime?	Y [S6(1)]	Y [S106]	Y [S22.1]	Y [S4(3)]	
Is a penalty established for mineral operations conducted without government approval?	Y [S6(1)]	Y [S108]	Y [S22.1]	Y [S4(3)]	

Box 3. Minerals and Ownership

- In Ghana, “Every mineral in its natural state in, under or upon land in Ghana, rivers, streams, water-courses throughout the country, the exclusive economic zone and an area covered by the territorial sea or continental shelf is the property of the Republic and is vested in the President in trust for the people of Ghana.”¹⁰¹
- The Uganda law reconfirms the constitutional provision that minerals are vested in the government—“Subject to any right granted to any person under this Act, the entire property in and control of all minerals in, on or under, any land or waters in Uganda are and shall be vested in the Government, notwithstanding any right of ownership of or by any person in relation to any land in, on or under which any such minerals are found.”¹⁰²
- In Kenya, “All unextracted minerals (other than common minerals) under or upon any land are vested in the Government, subject to any rights in respect thereof which, by or under this Act or any other written law, have been or are granted, or recognized as being vested, in any other person.”¹⁰³
- In Liberia (consistent with the Constitution), “Minerals on the surface of the ground or in the soil or subsoil, rivers, streams, watercourses, territorial waters and continental shelf of Liberia are the property of the Republic and anything pertaining to their Exploration, Development, Mining, and export shall be governed by this Law.”¹⁰⁴

Box 4. Meeting Environmental Safeguards

In all four countries, the law provides that the licensee must meet national environmental standards in performing their mineral operations. Uganda's law requires that all mining operations conduct an environmental impact assessment and receive approval (Mining Act (2003), Section 108), that "There shall be included in every exploration licence or mining lease granted under this Act a condition that the holder of such licence or lease takes all necessary steps to ensure the prevention and minimisation of pollution of the environment in accordance with the standards and guidelines prescribed under the National Environment Statute, 1995, Statute No. 4 of 1995" (Mining Act (2003), Section 109(1)), and that "There shall be included in an exploration licence or a mining lease granted under this Act, a condition that the holder shall submit an environmental restoration plan of the exploration or mining area that may be damaged or adversely affected by his or her exploration or mining operations" (Mining Act (2003), Section 110(1)).

Liberia's law has similar provisions for the licensee to conduct EIAs (Section 8.4), protect environment and limit pollution (An Act Adopting a New Minerals and Mining Law (2000), Section 8.1) and restore the site (An Act Adopting a New Minerals and Mining Law (2000), Section 8.2 and 8.3). The law also does not allow the licensee to clear "the land of all trees, scrubs and other obstacles" (An Act Adopting a New Minerals and Mining Law (2000), Section 11.6). Ghana's law requires that licensees get all the necessary approvals from environmental agencies and comply with environmental regulations (Minerals and Mining Act (2006), Section 18); restoration of the site is not in the law, but is in most licenses. Kenya's law requires that the licensee get approval for sectoral government agencies (forestry agencies, water agencies) and requires the licensee to clean up (not restore) the site (Mining Act (1940), Section 35(2)).

Box 5. Ownership and Control of Petroleum				
	Kenya	Ghana	Liberia	Uganda
CRITERIA	Petroleum (Exploration and Production) Act, 1986	Petroleum Exploration and Production Law, 1984	An Act Adopting a New Petroleum Law of the Republic of Liberia, 2002	Petroleum (Exploration and Production) Act, 1985
Is petroleum the property of the state?	Y [S3]	Y [S1.1]	Y [S3.1; Preamble; S2.4.1]	Y [S2.1]
Is petroleum vested in the government?	Silent	Silent	Silent	Silent
Can the government acquire private land in a compulsory manner for petroleum operations?	Silent	Silent	Y [S9.4]	Silent
Can the government allocate petroleum rights under private land?	Y	Y	Y [S3.2]	Y
Do petroleum operations require government approval?	Y [S4.1]	Y [S2.1]	Y [3.1.i; S2.4.3]	Y [S2.2]
Are petroleum operations without government approval a crime?	Silent	Y [S31.1.a & d]	Y [S11.3]	Y [S2.3]
Is a penalty established for mineral operations conducted without government approval?	Silent	Y [S31.1.d]	Y [S11.3]	Y [S2.3]

Box 6. Petroleum and Ownership

- In Ghana, "Without prejudice to any right granted, conferred, acquired, recognized or saved in this Law to explore for or produce petroleum, all petroleum existing in its natural state within the jurisdiction of Ghana is the property of the Republic of Ghana (hereafter referred to as "the Republic") and shall be vested in the Provisional National Defence Council (hereafter referred to as "the Council") on behalf of the people."¹⁰⁵
- In Uganda (consistent with the now amended 1995 Constitution), "Without prejudice to the exercise of any right under this Act, the property in, and the control of, petroleum in its natural condition in or upon any land in Uganda is vested in the Government on behalf of the Republic of Uganda."¹⁰⁶
- In Kenya, "All petroleum existing in its natural condition in strata lying within Kenya and the continental shelf is vested in the Government, subject to any rights in respect thereof which, by or under any other written law, have been or are granted or recognized as being vested, in any other person."¹⁰⁷
- In Liberia, "All Hydrocarbon deposits belong to and are the properties of the Republic of Liberia, which are held in trust by NOCAL. Whether such deposits are found on the surface of the ground or in the soil or subsoil, under the surface or rivers, ocean, streams, watercourses, territorial waters, and Continental Shelf of Liberia, they remain the property of the State as stated above."¹⁰⁸

Box 7. Environmental Provisions in Framework Petroleum Law

Requirement	Liberia	Kenya	Ghana	Uganda
Application must include environmental plan	No	No	No	Yes
Must conduct Environmental Impact Assessment	Yes	No	No	No
Must protect the environment	Yes	Yes	No	Yes
Must meet international environmental standards	Yes	No	No	No
Must clean up any pollution	Yes	No	Yes	Yes
Must restore/reclaim the land after operations	No	No	Yes	No

Box 8. Ownership of Trees and Forests in the Research Countries

The forest laws vary considerably across the four research countries on these issues and, in many cases, contrast sharply with the petroleum and mineral laws. For example, in Liberia, all forests are held in trust by the government and, in Ghana, all natural trees are owned by the state, while planted trees belong to the individual who planted them. In Uganda and Kenya, trees and forests on private property are the property of the landholder (*i.e.*, the bundle of land rights includes rights to the trees). Moreover, landholders in Ghana and, to some extent, Liberia are, by law, more engaged in the granting of rights to the trees on their land, have more authority over logging operations on their land, and have more rights to use their land

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- ¹ Veit, Peter G. and Carole Excell. Forthcoming. "Access to Information and Transparency Provisions in Petroleum Laws in Africa: A Comparative Analysis of Cases." In: Queen's University, Ed. *New Approaches to the Governance of Natural Resources: Insights from Africa*. Palgrave Macmillan.
- ² On 7 December 2012, Uganda's Petroleum (Exploration, Development and Production) Bill of 2012 was approved by parliament and sent to the President for assent into law.
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- ³ Downstream petroleum activities also affect privately-held land rights (e.g., when pipeline cross private property).
- ⁴ In Liberia, the landowner cannot undertake mineral operations without government approval (Liberia An Act Adopting a New Minerals and Mining Law (2000), Section 11.2) The mineral laws in some research countries also provide that landholders may use certain minerals, such as sand, from their land without authorization.
- ⁵ Uganda's Constitution of 1995 (amended 2005) and land acquisition law do not authorize the government to acquire land in a compulsory manner for economic development purposes.
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- ⁶ Ghana Minerals and Mining Act (2006), Section 2.
- Further, "Where the Minister, after consultation with the Commission considers that it is in the public interest to encourage small scale mining in an area, the Minister may by notice in the Gazette, designate that area for small scale mining operations and specify the mineral to be mined" (Ghana Minerals and Mining Act (2006), Section 89).
- ⁷ Kenya Mining Act (1940), Section 7(1)(m).
- Mineral operations on Trust Land require "the consent in writing of the county council" (Kenya Mining Act (1940), Section 7(1)(i)). At the time the mineral law was enacted, Trust Land was customary land held by county councils. With the passing of the new Constitution in 2012, Trust Land is no longer a recognized type of land tenure in Kenya.
- ⁸ Kenya Mining Act (1940), Section 7(3): If consent "is unreasonably withheld or the Minister considers that any withholding of consent is contrary to the national interest, the Minister may take such steps as are necessary under the law relating to the compulsory acquisition of land or rights or interests in land to vest the land or area in question, or rights or interests in such land or area, in the Government or on behalf of the Government; and thereafter such land or area shall cease to be land excluded from prospecting and mining."
- ⁹ Uganda Mining Act (2003), Section 78(1)(b).
- ¹⁰ Uganda Mining Act (2003), Section 78(1)(i).
- Further, "A person exercising any right under a mineral right on any land shall, if required to do so by any lawful occupier of any such land, produce evidence that he or she is the holder of such mineral right or an agent or employee of the holder; and if he or she fails to do so he or she may be treated as a trespasser" (Uganda Mining Act (2003), Section 78(4)).
- ¹¹ Kenya Mining Act (1940), Section 14(a)(iv).
- ¹² Liberia An Act Adopting a New Minerals and Mining Law (2000), Section 6.7(d).
- ¹³ Ghana Minerals and Mining Act (2006), Section 46.
- Kenya's mining law provides the licensee with similar rights to use privately-held land (Kenya Mining Act (1940), Sections 14, 20, 32 and 47) although the rights are outdated from when the law was passed in 1940. For example, to accommodate the horses used for transport and mining, the licensee has the right to "graze upon lands not excluded from prospecting such horses or other animals as may be necessary for his subsistence or for the carrying on of prospecting or mining, on payment or tender of a reasonable sum in payment therefore" (Kenya Mining Act (1940), Section 14(a)(v)).
- ¹⁴ Uganda Mining Act (2003), Section 81(1): "The holder of a mining lease may, if he or she requires the exclusive use of the whole or any part of the mining area concerned, and if so requested by the owner or lawful occupier of any part of such area, obtain a land lease or other rights to use the area upon such terms as to duration or the extent of the land to which the lease shall relate, as may be agreed between the holder and the owner or lawful occupier of the land in question, or failing an agreement, as may be determined by arbitration."
- ¹⁵ Uganda Mining Act (2003), Section 40: "At the written request of the holder of a mining lease, the Chief Administrative Officer of the district concerned shall, subject to the Constitution and any other applicable written law, take such lawful steps as he or she deems fit to remove any land owner or lawful occupier of land from the areas of the proposed mining lease; except that the holder of the mining lease shall pay on demand such compensation as is required by law."
- ¹⁶ In Uganda, the application for a mining license must include the water needs and water infrastructure that will be constructed (Uganda Mining Act (2003), Section 87(1)) and requires the licensee to get separate water rights—"Part II of the Water Statute, 1995 (Statute No. 9 of 1995), shall apply in relation to and for the purpose of acquiring the right to use water in any manner or for any purpose or object specified in" the application. (Uganda Mining Act (2003), Section 87(2)).
- In Ghana, "Subject to obtaining the requisite approvals or licences under the Water Resources Commission Act 1996 (Act 552), a holder of a mineral right may, for purposes of or ancillary to the mineral operations, obtain, divert, impound, convey and use water from a river, stream, underground reservoir or watercourse within the land the subject of the mineral right" (Ghana Minerals and Mining Act, (2006), Section 17).
- ¹⁷ Liberia An Act Adopting a New Minerals and Mining Law (2000), Section 6.7(d)(5).
- ¹⁸ Liberia An Act Adopting a New Minerals and Mining Law (2000), Section 6.7(d)(4).
- ¹⁹ Kenya Mining Act (1940), Section 47(b)(v).
- For prospecting, the licensee can "take for the purposes of bona fide prospecting or for his domestic use water from any lake, river or stream" but "shall not divert water from any river, stream or watercourse without the consent of the authority having control thereof" (Kenya Mining Act (1940), Section 14(a)(iv)).
- ²⁰ Kenya Mining Act (1940), Section 32.
- ²¹ Uganda Mining Act (2003), Section 79.
- ²² Liberia An Act Adopting a New Minerals and Mining Law (2000), Section 11.4.
- ²³ Some mineral laws provide that landholders may use certain minerals, such as sand, from their land without authorization.

²⁴ Ghana Minerals and Mining Act (2006), Section 9(1).

²⁵ Ghana Minerals and Mining Act (2006), Section 72(3).

²⁶ Ghana Minerals and Mining Act (2006), Section 72(4): “In the case of a mining area, the owner or lawful occupier of the land within the mining area shall not erect a building or a structure without the consent of the holder of the mining lease, or if the consent is unreasonably withheld, without the consent of the Minister.”

²⁷ Ghana Minerals and Mining Act (2006), Section 72(6): “An owner or lawful occupier of land shall not upgrade to a higher value crop without the written consent of the holder of the mining lease, or if the consent is unreasonably withheld, without the consent of the Minister.”

²⁸ Uganda Mining Act (2003), Section 80(1): “The owner or lawful occupier of any land within an area which is the subject of a mineral right shall retain the right to graze stock upon or to cultivate the surface of such land, so far as the grazing or cultivation does not interfere with the proper working in such area for prospecting, exploration or mining purposes; and in so far as the grazing or cultivation does not constitute a danger or hazard to livestock or crops.”

²⁹ Uganda Mining Act (2003), Section 80(2): “(a) any loss or damage to stock or crops arising out of the exercise of such right shall be borne by the owner or lawful occupier of the land; and (b) any interference by the owner or lawful occupier with the proper working or operation in such area for prospecting, exploration or mining purposes shall be a ground for terminating such right.”

³⁰ Liberia An Act Adopting a New Minerals and Mining Law (2000), Section 11.3.

³¹ Ghana Minerals and Mining Act (2006), Section 73(1).

³² Kenya Mining Act (1940), Section 26(1): “Whenever, in the course of prospecting or mining operations, any disturbance of the rights of the owner or lawful occupier of any lands or nuisance or damage to such lands or to any crops, trees, buildings, stock or works thereon is caused, the holder of the prospecting right, exclusive prospecting licence or location under which such operations are or were carried out, and his successors in title thereto, shall be liable, on demand duly made, to pay to such owner or occupier fair and reasonable compensation for such disturbance or nuisance or damage, as the case may be, according to their respective rights or interests (if any) in the property concerned.”

³³ Uganda Mining Act (2003), Section 82(1): “The holder of a mineral right shall on demand made by the owner or lawful occupier of any land subject to such mineral right, pay the owner or lawful occupier fair and reasonable compensation for any disturbance of the rights of the owner or occupier; and for any damage done to the surface of the land by the holder’s operations; and shall on demand made by the owner of any crops, trees, buildings or works damaged during the course of such operations, pay compensation for any crops, trees, buildings or works so damaged.”

³⁴ Centre for Public Interest Law (<http://www.cepil.org.gh/>).

³⁵ Ghana Minerals and Mining Act (2006), Section 73(3): “The amount of compensation payable ... shall be determined by agreement between the parties...”

Ghana Minerals and Mining Act (2006), Section 73(4): “The Minister shall ensure that inhabitants who prefer to be compensated by way of resettlement as a result of being displaced by a proposed mineral operation are settled on suitable alternate land, with due regard to their economic well-being and social and cultural value, and the resettlement is carried out in accordance with the relevant town planning laws.”

Ghana Minerals and Mining Act (2006), Section 94: “Where a licence [for small scale mining] is granted in a designated area to a person other than the owner of the land, the licensee shall pay compensation for the use of the land and destruction of crops to the owner of the land that the Minister in consultation with the Commission and the Government agency with responsibility for valuation of public lands may prescribe.”

³⁶ Uganda Mining Act (2003), Section 83.

³⁷ Uganda Mining Act (2003), Section 98(2): “Royalty shall be shared by the Government, Local Governments and owners or lawful occupiers of land subject to mineral rights as specified in the Second Schedule to this Act.”

³⁸ Kenya Petroleum (Exploration and Production) Act (1986), Section 4(1): “No person shall engage in any petroleum operations in Kenya without having previously obtained the permission of the Minister in such manner, in such form and on such terms as are prescribed by this Act and by regulations made thereunder.”

³⁹ Uganda Petroleum (Exploration and Production) Act (1985), Section 2: “(2) No person shall carry on any exploration or development operations on petroleum in or upon any land in Uganda except under, and in accordance with, a licence issued under this Act. 3) Any person who contravenes subsection (2) commits an offence and is liable on conviction— a) if he or she is an individual, to a fine not exceeding ten million shillings or to a term of imprisonment not exceeding five years or to both such fine and imprisonment; and b) if it is a body corporate, to a fine not exceeding one hundred million shillings.”

The Uganda Petroleum (Exploration, Development and Production) Bill (2012) provides “(1) Petroleum activities in, on or under any land or waters in Uganda or subject to Ugandan jurisdiction, shall not be conducted without an authorisation, licence, permit or approval issued in accordance with this Act. (2) A person who contravenes subsection (1) commits an offence and is liable on conviction— a) if an individual, to a fine not exceeding ten thousand currency points or imprisonment not exceeding ten years or both; and b) if a body corporate, to a fine not exceeding one hundred thousand currency points” (Section 6).

⁴⁰ Liberia An Act Adopting a New Petroleum Law (2002), Section 2.4.3: “... No party, including the owner of the surface estate, may carry out petroleum operations without prior authorization according to the provisions of the present law.”

Liberia An Act Adopting a New Petroleum Law (2002), Section 3.1(i): “No person or company including landowners may undertake and petroleum or hydrocarbon operation without receiving prior written authorization from the State through NOCAL.”

Liberia An Act Adopting a New Petroleum Law (2002), Section 11.3: “Violations of this law and the applicable administrative regulations shall be punishable by a fine not less than US\$100,000 depending on the gravity of the case and the damage caused by the violation. Any court of competent jurisdiction or such competent official or administrative forum shall hear the case.”

⁴¹ Ghana Petroleum Exploration and Production Law (1984), Section 2(1): “No person other than the Ghana National Petroleum Corporation established under the Ghana National Petroleum Corporation Law, 1983 (P.N.D.C.L. 64) in this Law referred to as ‘the Corporation’, shall engage in the exploration, development or production of petroleum except in accordance with the terms of a petroleum agreement entered into between that person, the Republic and the Corporation pursuant to subsection (4) of section 5 of this Law or any other authority granted or recognized under this Law.”

Ghana Petroleum Exploration and Production Law (1984), Section 31(1): “Any person who—(a) undertakes petroleum operations otherwise than in accordance with the provisions of this Law... or (d) otherwise contravenes any other provision of this Law, shall be guilty of an offence and liable on conviction to a fine not exceeding 01,000,000.00 and, where the offence continues, to a fine not exceeding 01,000,000.00 for each day on which the offence continues or to imprisonment for a term not exceeding six months or both.”

Ghana Petroleum (Exploration and Production) Bill (2010), Section 2(1): “A person who intends to explore, develop or produce petroleum shall do so under a petroleum agreement and in accordance with the Regulations.”

⁴² Liberia An Act Adopting a New Petroleum Law (2002), Section 9.2.1.

⁴³ Ghana Petroleum (Exploration and Production) Bill (2010), Section 12(3): “Where there is hindrance to the acquisition of property, the property may be acquired for the Corporation under the State Property and Contracts Act 1960 «CA. 6) or State Lands Act, 1962 (Act 125) and the cost of the acquisition to be defrayed by the Corporation.”

⁴⁴ Liberia An Act Adopting a New Petroleum Law (2002), Section 9.4: “...The holder of a petroleum contract may request, through the National Oil Company of Liberia, that the State by the way of appropriate legal action, facilitate the availability of the needed land...”

Also, “The acquisition and occupation of lands needed for the pipelines and related installations shall be in accordance with the Laws of the Republic of Liberia, the provisions of these laws and related regulations and contacts” (Liberia An Act Adopting a New Petroleum Law (2002), Section 8.4.2).

⁴⁵ Kenya Model Production Sharing Contract, Section 17: “(1) The Government may, at the request of the contractor, make available to the contractor such land as the contractor may reasonably require for the conduct of petroleum operations and— (a) where the land is Trust Land, the Government shall, subject to sub-clause 17 (2), set apart such Trust Land in the contract area in accordance with the Trust Land Act and Chapter IX of the Constitution; (b) where the land is private land, the Government may, subject to section 10 of the Act, acquire the land in accordance with the applicable laws;...”

⁴⁶ Kenya Model Production Sharing Contract, Section 17(3): “The Government shall grant or cause to be granted to the contractor, its contractors and sub-contractors such way-leaves, easements, temporary occupation or other permissions within and without the contract area as are necessary to conduct the petroleum operations and in particular for the purpose of laying, operating and maintaining pipelines and cables, and passage between the contract area and the point of delivery of petroleum.”

⁴⁷ Liberia An Act Adopting a New Petroleum Law (2002), Section 9.3: “The occupation and utilization of land for the exercise of the rights referred to in this law, are subject to mutual agreements between the holder of a petroleum contract and the owners of the land or the beneficiaries.”

Liberia An Act Adopting a New Petroleum Law (2002), Section 9.3.1: “In the absence of an amicable agreement, the National Oil Company of Liberia may intervene so as not to delay the normal course of petroleum operations without prejudice to the rights of legitimate owners of the land or the beneficiaries.”

⁴⁸ Ghana Petroleum Exploration and Production Law (1984), Section 6(2)(a).

⁴⁹ Ghana Petroleum Exploration and Production Law (1984), Section 6(2): “Any person holding a title to or an interest in land on which the Corporation or a contractor or sub-contractor proposes to enter and to carry out petroleum operations shall, after consultation with the Corporation, permit the carrying out of such operations...”

⁵⁰ Ghana Petroleum (Exploration and Production) Bill (2010), Section 12(2).

⁵¹ Uganda Petroleum (Exploration and Production) Act (1985), Section 38(1): “A holder of a licence shall not exercise any right under it:...(b) without the written consent of the lawful occupier thereof: (i) upon any land which is the site of or which is within two hundred metres of any inhabited, occupied or temporarily unoccupied house or building; (ii) within fifty metres of any land which has been cleared or ploughed or otherwise bona fide prepared for the growing of agricultural crops or on which agricultural crops are growing; (iii) upon any land from which, during the year immediately preceding, agricultural crops have been reaped; or (iv) upon any land which is the site of or is within one hundred metres of any cattle dip, tank, dam or water used by mankind or cattle, but where consent of the lawful occupier is unreasonably withheld, the Minister may authorise the holder of the licence to exercise all or any of his or her rights under the licence on such land subject to such conditions as the Minister may deem fit...”

⁵² Uganda Petroleum (Exploration and Production) Act (1985), Section 38(1)(iv).

⁵³ Uganda Petroleum (Exploration, Development and Production) Bill (2012), Section 132(1): “A licensee shall not exercise any right under a licence—... (b) without the written consent of the land owner—(i) upon any land which is the site of or which is within two hundred metres of any inhabited, occupied or temporarily unoccupied house or building; (ii) within fifty metres of any land which has been cleared or ploughed or otherwise bona fide prepared for the growing of agricultural crops or on which agricultural crops are growing; (iii) upon any land from which, during the year immediately preceding, agricultural crops have been reaped; or (iv) upon any land which is the site of or which is within one hundred metres of a cattle dip-tank, dam or water used by human beings or cattle.”

⁵⁴ Uganda Petroleum (Exploration, Development and Production) Bill (2012), Section 132: “...(3) A person exercising any right under a licence shall produce evidence of the possession of the licence to the land owner of any land upon which the right is to be exercised upon being asked for it. (4) Where a person does not produce the evidence under subsection (3), he or she may be treated as a trespasser.”

⁵⁵ Kenya Petroleum (Exploration and Production) Act (1986), Section 10(1): “Where a contractor intends to enter upon any private land for the purposes of conducting petroleum operations, he shall give not less than forty-eight hours’ notice of his intention to the occupier, and if practicable to the owner, of the land and shall, if required by the owner or occupier, give security in such sum and by way of such means as the Minister may direct for meeting any compensation payable under subsection (2).”

⁵⁶ Kenya Petroleum (Exploration and Production) Regulations (1986), Section 6(1): “Neither a petroleum agreement nor an exploration permit granted under section 5 (2) of the Act shall of itself authorize a contractor or its subcontractors or the grantee of a permit to enter upon or occupy or exercise any rights in-(a) any burial ground or land in the vicinity or precincts of any church, mosque or other sacred buildings or places of worship; (b) any area situated within fifty metres of any building in use, or any reservoir or dam...”

⁵⁷ Kenya Petroleum (Exploration and Production) Regulations (1986), Section 6: “... (2) Entry into any area of land or place specified in paragraph (1) shall be subject to the consent of the competent authority. (3) For the purpose of paragraph (2) “competent “authority” means the person or body for the time being empowered under the relevant written law or custom to authorize access to the area of land or place”

⁵⁸ Kenya Model Production Sharing Contract, Section 7(4)

⁵⁹ Ghana Petroleum Exploration and Production Law (1984), Section 24(1)(a): “A contractor shall, subject to the provisions of this Law and in association with the Corporation, have a right to carry out petroleum operations and execute such works as may be expedient in the area the subject of a petroleum agreement.”

⁶⁰ Ghana Petroleum Exploration and Production Law (1984), Section 6(1): “Subject to the provisions of this Law and such Regulations as may be prescribed, the Corporation or a contractor or sub-contractor shall have the right to enter upon any land to carry out petroleum operations.”

⁶¹ Kenya Model Production Sharing Contract, Section 7(1).

⁶² Liberia An Act Adopting a New Petroleum Law (2002), Section 9.1.1.

⁶³ Liberia An Act Adopting a New Petroleum Law (2002), Section 9.1.2: The holder of a petroleum contract may: “Carry out or have carried out the infrastructure development necessary for the construction of pipelines, petroleum operations and related activities, including the transportation, storage of materials, equipment and product. It may also utilize public or private land or the establishment of telecommunications and other means of communications, as well as the production or supply of energy necessary for the petroleum operations.”

⁶⁴ Liberia An Act Adopting a New Petroleum Law (2002), Section 9.1.3: The holder of a petroleum contract may: “Carry out or have carried out drilling operations and the work required to furnish water for personnel, for operations, and for installations in keeping with the regulations affecting water production.”

⁶⁵ Liberia An Act Adopting a New Petroleum Law (2002), Section 9.1.4: “Take and use or cause to be taken and used, the ground materials needed for the activities referred to above, subject to payment of fair compensation to the owner or the appropriate and corresponding fees for the utilization of ground materials extraction.”

⁶⁶ Uganda Petroleum (Exploration and Production) Act (1985), Section 12: “A petroleum exploration licence, while it remains in force, shall confer on the licensee, subject to the provisions of this Act and to the conditions specified in the licence or to which the licence is otherwise subject, the exclusive right to explore for petroleum, and to carry on such operations and execute such works as may be necessary for that purpose, in the exploration area.”

The new Uganda Petroleum (Exploration, Development and Production) Bill (2012) provides “A petroleum exploration licence, while it remains in force, shall confer on the licensee, subject to the provisions of this Act and to the conditions specified in the licence or to which the licence is otherwise subject, the exclusive right to explore for petroleum, and to carry on such operations and execute such works as may be necessary for that purpose, in the exploration area” (Section 61).

⁶⁷ Uganda Petroleum (Exploration and Production) Act (1985), Section 25: “A petroleum production licence, while it remains in force, confers on the licensee, subject to this Act and to the conditions specified in the licence or to which the licence is otherwise subject, exclusive rights: a) to carry on exploration and development operations in the development area;...and c) to carry on such operations and execute such works in the development area as are necessary for or in connection with any matter referred to in paragraphs (a) and (b).”

The new Uganda Petroleum (Exploration, Development and Production) Bill (2012) provides “A petroleum production licence, while it remains in force, confers on the licensee, subject to this Act, and to the conditions specified in regulations and the petroleum production licence or to which the licence is otherwise subject, exclusive rights—(a) to carry on petroleum activities in the licence area...” (Section 78).

⁶⁸ Uganda Petroleum (Exploration and Production) Act (1985), Section 40(1): “...a holder of a petroleum production licence may, if he or she requires the exclusive use of the whole or any part of a block in a development area, and shall, if so requested by the lessee of any part of such area, obtain a lease of the land or other right to use it upon such terms as to the rent to be paid therefor, the duration thereof or the extent or area of the land to which the lease or other right shall relate as may be agreed between the holder and the lessee or, failing such agreement, as may be determined by arbitration.”

The new Uganda Petroleum (Exploration, Development and Production) Bill (2012) provides “(1) Subject to section 132 and to any written law relating to the acquisition of land, a holder of a petroleum production licence may, if he or she requires the exclusive use of the whole or any part of a block in a development area, and shall, if requested by the lessor of any part of that area, obtain a lease of the land or other right to use it upon such terms as to the rent to be paid for the land, the duration or the extent or area of the land to which the lease or other right of the lease shall relate as may be agreed between the holder of a licence and the lessor. (2) Where the holder of a licence and the lessor under subsection (1) fail to agree, the matter shall be referred to the Chief Government Valuer for determination” (Section 135).

⁶⁹ Uganda Petroleum (Exploration and Production) Act (1985), Section 39(3): “The rights conferred by a licence shall be exercised reasonably and so as to affect as little as possible the interests of any lessee or lawful occupier of the land to which the rights are exercised, and exploration or development operations shall be carried out in a proper manner.”

The new Uganda Petroleum (Exploration, Development and Production) Bill (2012) provides “The rights conferred by a licence shall be exercised reasonably and so as to affect as little as possible the interests of any lessee or land owner to which the rights are exercised, and petroleum activities shall be carried out in a proper manner” (Section 133(3)).

⁷⁰ Kenya Model Production Sharing Contract, Section 7(3): “The Minister shall obtain on behalf of the contractor, any permit necessary to enable the contractor to use the water in the contract area for the purpose of the petroleum operations but the contractor shall not unreasonably deprive the users of land, domestic settlement or cattle watering place of the water supply to which they are accustomed.”

⁷¹ Liberia An Act Adopting a New Petroleum Law (2002), Section 2.9.

⁷² Kenya Petroleum (Exploration and Production) Act (1986), Section 9(f).

⁷³ Ghana Petroleum Exploration and Production Law (1984), Section 31.1: Any person who “(b) unlawfully interferes with or obstructs the Corporation or a contractor or sub-contractor or their agents or employees in the exercise of any right under this Law; (c) willfully obstructs, hinders or assaults any other person in the exercise of any right, power or in the performance of any duty under this Law; or (d) otherwise contravenes any other provision of this Law, shall be guilty of an offence and liable on conviction to a fine not exceeding ₵1,000,000.00 and, where the offence continues, to a fine not exceeding ₵1,000,000.00 for each day on which the offence continues or to imprisonment for a term not exceeding six months or both.” (1.905 Ghanaian Cedis (GHS) is equal to 1 US Dollar).

⁷⁴ Liberia An Act Adopting a New Petroleum Law (2002), Section 9.3.3: “When an occupation of private land deprives the owner of the use of his land for a period greater than two years, the owner of the land may require the holder of the petroleum contract to acquire the land. i. The land to be thus acquired shall be purchased at the fair market value. ii. The owner or any of the parties shall have the right to refer any differences, which cannot be resolved among them, to a court of competent jurisdiction within the Republic of Liberia. iii Compensation other than to the State, for the occupation or possession of any land shall be made only where the claimant can present a bonafide and convincing title to the property.”

This includes land for pipelines. “When the pipelines or installations interfere with the normal use of the land, such that the owner presents a claim, the holder must proceed to acquire said parcels. In the even the Parties fail to amicably agree on the value or price to be paid, the State through the National Oil Company of Liberia may intervene by way of condemnation or eminent domain and pay the appropriate compensation due in accordance with law.” (Liberia An Act Adopting a New Petroleum Law (2002), Section 8.4.6).

⁷⁵ For example, “The owner of such land, which is encumbered by the pipelines, shall refrain from any act likely to interfere or harm the proper functioning and usage of the pipelines and installations” (Liberia An Act Adopting a New Petroleum Law (2002), Section 8.4.4).

⁷⁶ Uganda Petroleum (Exploration and Production) Act (1985), Section 40(1): “...a holder of a petroleum production licence may, if he or she requires the exclusive use of the whole or any part of a block in a development area, and shall, if so requested by the lessee of any part of such area, obtain a lease of the land or other right to use it upon such terms as to the rent to be paid therefor, the duration thereof or the extent or area of the land to which the lease or other right shall relate as may be agreed between the holder and the lessee or, failing such agreement, as may be determined by arbitration.”

The new Uganda Petroleum (Exploration, Development and Production) Bill (2012) provides that “(1) ...a holder of a petroleum production licence may, if he or she requires the exclusive use of the whole or any part of a block in a development area, and shall, if requested by the lessor of any part of that area, obtain a lease of the land or other right to use it upon such terms as to the rent to be paid for the land, the duration or the

extent or area of the land to which the lease or other right of the lease shall relate as may be agreed between the holder of a licence and the lessor. (2) Where the holder of a licence and the lessor under subsection (1) fail to agree, the matter shall be referred to the Chief Government Valuer for determination” (Section 135).

⁷⁷ Uganda Petroleum (Exploration and Production) Act (1985), Section 39(2): “In the case of a development area, the lessee or lawful occupier of any land within the area shall not erect any building or structure on the land without the written consent of the registered holder of the licence or, if the consent is unreasonably withheld, the written consent of the Minister.”

⁷⁸ Uganda Petroleum (Exploration, Development and Production) Bill (2012), Section 133(2): “In the case of a development area, the land owner within the area shall not erect any building or structure on the land without the written consent of the licensee or, if the consent is unreasonably withheld, the written consent of the Minister.”

⁷⁹ Uganda Petroleum (Exploration, Development and Production) Bill (2012), Section 133(1).

⁸⁰ Uganda Petroleum (Exploration, Development and Production) Bill (2012), Section 134.

⁸¹ Kenya Model Production Sharing Contract, Section 17(1)(c): “the contractor shall pay or reimburse the Government any reasonable compensation that may be required for the setting apart, use or acquisition of any land for the petroleum operations.”

⁸² Kenya Model Production Sharing Contract, Section 10: “(2) Whenever, in the course of carrying out petroleum operations, any disturbance of the rights of the owner or occupier of private land, or damage to the land, or to any crops, trees, buildings, stock or works therein or thereon is caused, the contractor shall be liable on demand to pay to the owner or occupier such compensation as if fair and reasonable having regard to the extent of the disturbance or damage and to the interest of the owner or occupier in the land. (3) If the contractor fails to pay compensation when demanded under subsection (2), or if the owner or occupier is dissatisfied with the amount of compensation offered to him, the owner or occupier may, within six months of the date on which the demand or offer is made, take proceedings before a court of competent jurisdiction for the determination and recovery of compensation (if any) properly payable under subsection (2).”

⁸³ Ghana Petroleum Exploration and Production Law (1984), Section 6(2)(b): “...any person having a title to or interest in such land who suffers any loss or damage as a result of the petroleum operations shall be entitled to such compensation as may be determined by Law.”

The Ghana Petroleum (Exploration and Production) Bill (2010) provides, “Where the conduct of petroleum operations is likely to affect any lawful economic or social interest or activity the Corporation shall negotiate the appropriate permission required from the relevant authorities and interested persons and the Contractor or the Corporation shall pay the agreed compensation to the interested persons” (Section 12(2)).

⁸⁴ Ghana Petroleum Exploration and Production Law (1984), Section 7: “(1) The owner or occupier of any land on which the Corporation or such contractor or sub-contractor as the case may be, has carried out petroleum operations, shall apply to the Corporation or sub-contractor for compensation for any disturbance, of the owner's or occupier's surface rights and for any damage to the surface of the land, buildings, works or improvements or to livestock, crops and trees as a result of such petroleum operations... (3) The amount of compensation payable under subsection (1) of this section shall, subject to the approval of the Land Valuation Board, be determined by agreement between the parties concerned, or if the parties are unable to reach agreement as to the compensation, the matter shall be referred to the Secretary who shall in consultation with the Land Valuation Board determine the compensation payable”

⁸⁵ Uganda Petroleum (Exploration and Production) Act (1985), Section 41: “(1) A holder of a licence shall, on demand being made by the lessee or lawful occupier of any land, pay the lessee or occupier fair and reasonable compensation for any disturbance of their rights and for any damage done to the surface of the land due to exploration or development operations, and shall, on demand being made by the owner of any crops, trees, buildings or works damaged during the course of such operations, pay compensation for the damage; but— a) payment of rent to a lessee or compensation to a lawful occupant...under the provisions of section 40 shall be deemed to be adequate compensation... b) in assessing compensation payable under this section, account shall be taken of any improvements effected by the holder of the licence or by his or her predecessor in title, the benefit of which has or will ensure to the lessee or lawful occupier of the land; c) the basis upon which compensation shall be payable for damage to the surface of any land shall be the extent to which the market value of the land ...upon which the damage occurred has been reduced by reason of the damage, but without taking into account any enhanced value due to the presence of petroleum. 2) Where the holder of a licence fails to pay compensation when demanded under this section, or if the lessee or lawful occupier of any land is dissatisfied with any compensation offered, the dispute shall be determined by arbitration...”

⁸⁶ Uganda Petroleum (Exploration and Production) Act (1985), Section 40(2): “In assessing any rent payable under this section— a) account shall be taken of any compensation necessary for the termination of any lawful occupancy in accordance with any other written law for the time being in force; b) an arbitrator shall determine the matter in relation to values at the time of the arbitration current in the area to which the development licence relates for land of a similar nature to the land concerned but without taking into account any enhanced value due to the presence of petroleum.”

⁸⁷ Uganda Petroleum (Exploration, Development and Production) Bill (2012), Section 136: “(1) A licensee shall, on demand being made by a land owner, pay the land owner fair and reasonable compensation for any disturbance of his or her rights and for any damage done to the surface of the land due to petroleum activities, and shall, at the demand of the owner of any crops, trees, buildings or works damaged during the course of the activities, pay compensation for the damage;...(2) Where the licensee fails to pay compensation under this section, or if the land owner of any land is dissatisfied with any compensation offered, the dispute shall be determined by the Chief Government Valuer. (3) A claim for compensation under subsection (1) shall be made within four years from the date when the claim accrued failing which, notwithstanding any provision of any other written law, the claim shall not be enforceable.”

Further, “Where the holder of a licence and the lessor under subsection (1) fail to agree, the matter shall be referred to the Chief Government Valuer for determination” (Uganda Petroleum (Exploration, Development and Production) Bill (2012), Section 135(2)).

⁸⁸ Liberia An Act Adopting a New Petroleum Law (2002), Section 9.6: “All expenses, indemnities and charges caused by the occupation of land necessary to petroleum operations shall be for the account of and borne by the holder of the petroleum contract. The holder of a Petroleum Contract or its subcontractor is required to remedy all injuries or harms caused or induced by the holder in the course of its petroleum operations or related activities or by installations located within or without the perimeter of the area under contract...”

⁸⁹ Liberia An Act Adopting a New Petroleum Law (2002), Section 9.3.2: “The occupation of land belonging to private persons entitles the latter to the rights of a reasonable annual compensation equal to the value of the land or the equivalent of the income the owner was receiving from the land prior to the occupation by the holder. i Such payment shall continue for the entire duration for the occupation.”

Liberia An Act Adopting a New Petroleum Law (2002), Section 9.3: “The occupation and utilization of land for the exercise of the rights referred to in this law, are subject to mutual agreements between the holder of a petroleum contract and the owners of the land or the beneficiaries.”

Liberia An Act Adopting a New Petroleum Law (2002), Section 9.3.1: “In the absence of an amicable agreement, the National Oil Company of Liberia may intervene so as not to delay the normal course of petroleum operations without prejudice to the rights legitimate owners of the land or the beneficiaries. Provided that: i. The mediations of the National Oil Company of Liberia may include the payment of the reasonable and just

compensation to the legitimate owners of the land. ii. After successfully mediating between the parties, the National Oil Company of Liberia shall cause to be issued the appropriate permit or clearance for the occupation and use of the land.”

⁹⁰ Liberia An Act Adopting a New Petroleum Law (2002), Section 8.4.5: “Just compensation in keeping with law shall be paid to private landowners for the parcel for land encroached upon or encumbered by the pipelines.”

⁹¹ Liberia An Act Adopting a New Petroleum Law (2002), Section 9.4: “9.4.1 When circumstances so require, an expropriation for reasons of public interest of all lands and goods according to the current regulations and legislations shall take place; the holder of the petroleum contract shall be responsible for any expenses, compensations and charges resulting from the procedures of expropriation. 9.4.2 The compensation for the cost of expropriation shall be equal to half the value paid to the owner of the expropriated land, where said value is determined by the use of the land prior to the expropriation or, as the case may be, prior to the occupation. 9.4.3 Any disputes related to said compensation shall be submitted to the civil courts for resolution. The transfer for property shall be effectively declared following the expropriation procedure.”

⁹² Liberia An Act Adopting a New Petroleum Law (2002), Section 9.1.4: “Take and use or cause to be taken and used, the ground materials needed for the activities referred to above, subject to payment of fair compensation to the owner or the appropriate and corresponding fees for the utilization of ground materials extraction.”

⁹³ Ghana Minerals and Mining Act (2006), Section 46.

⁹⁴ Liberia An Act Adopting a New Minerals and Mining Law (2000), Section 11.3.

⁹⁵ Liberia An Act Adopting a New Petroleum Law (2002), Section 2.4.10.

⁹⁶ Ghana Petroleum Exploration and Production Law (1984), Section 5(2).

⁹⁷ Kenya Petroleum (Exploration and Production) Act (1986), Section 4(5): “Notwithstanding the provisions of this section, the Government may grant to any person, other than the contractor, a permit for the prospecting and mining of minerals or other natural resources other than petroleum or the conduct of operations other than petroleum operations within an area which is the subject of a petroleum agreement, provided that the prospecting, mining and the other operations shall not interfere with petroleum operations.”

⁹⁸ Kenya Model Production Sharing Contract, Section 7(2): “The contractor is granted the right to enter upon the contract area and conduct petroleum operations there, but permission may be granted to other persons to search for and mine minerals, other than petroleum, so long as they do not unreasonably interfere with the petroleum operations, and easements and rights of way may be granted to other persons for the benefit of land adjacent to the contract area.”

⁹⁹ Uganda Petroleum (Exploration, Development and Production) Bill (2012), Section 132(1): “A licensee shall not exercise any right under a licence— (a) without the written consent of the relevant authority, upon any land dedicated or set apart for a public purpose or for a place of burial, or upon land over which a mining lease, an exploration licence or a right to cultural site has been granted...”

¹⁰⁰ Uganda Petroleum (Exploration, Development and Production) Bill (2012), Section 134: “A land owner or licensee with a different licence other than one under this Act shall, with regard to an exploration or development area, retain the right to movement and other activities where the subsurface activities do not interfere with an exclusive right, or with petroleum activities in the area.”

¹⁰¹ Ghana Minerals and Mining Act, 2006, Section 1.

¹⁰² Uganda Mining Act (2003), Section 3.

¹⁰³ Uganda Mining Act (1940), Section 4.

¹⁰⁴ Liberia An Act Adopting a New Minerals and Mining Law (2000), Section 2.1.

¹⁰⁵ Ghana Petroleum Exploration and Production Law (1984), Section 1(1).

In the Ghana Petroleum (Exploration and Production) Bill (2010), “Petroleum existing in its natural state within the jurisdiction of the Republic of Ghana is the property of the Republic of Ghana and is vested in the President on behalf of and in trust for the people of Ghana subject to any right granted, conferred, acquired, recognised or saved under this Act” (Section 1).

¹⁰⁶ Uganda Petroleum (Exploration and Production) Act (1985), Section 2(1).

In the Uganda Petroleum (Exploration, Development and Production) Bill (2012), “In accordance with article 244 of the Constitution, the entire property in, and the control of, petroleum in its natural condition in, on or under any land or waters in Uganda is vested in the Government on behalf of the Republic of Uganda” (Section 5).

¹⁰⁷ Kenya Petroleum (Exploration and Production) Act (1986), Section 3.

¹⁰⁸ Liberia An Act Adopting a New Petroleum Law (2002), Section 3.1.

In the preamble of the Liberia petroleum law, “WHEREAS, Chapter III Article 22 (a) of the Constitution grants every citizen the right to own property and defines the limitation on private property rights in Chapter III, Article 22 (a) which provides that: “Private property rights however shall not extend to any mineral resources on or beneath any land or to any land under the seas and water ways of the Republic of Liberia. All mineral resources in and under the seas and waterways shall belong to the Republic and be used by and for the entire Republic; and WHEREAS, in furtherance and consistent with the constitutional mandate, that, the Republic shall manage the National Economy and the Natural Resources, to ensure the maximum feasible participation of Liberian citizens, the National Legislature on April 20, 2000, enacted a law establishing the National Oil Company of Liberia. According, that law provides: “Section 3. Purpose: The Corporation is established for the purpose of holding all of the rights, title and interest of the Republic of Liberia in the deposits and reserves of liquid and gaseous hydrocarbons within the territorial limits of the Republic of Liberia, whether potential, proven, or actual with the aim of facilitation the development of the oil and gas industry in the Republic of Liberia...” (Preamble).

And, regarding the issuing of a license, “All hydrocarbon reserves or natural accumulations in the ground or of the territory of the Republic of Liberia, its territorial sea, exclusive economic zone, and continental shelf, whether discovered or not, are and shall remain the exclusive property of the State substratum” (Section 2.4.1).